

THE HONORABLE MARSHA J. PECHMAN

FILED  
LODGED  
APR 23 2010  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY



09-CV-00606-ORD

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

JUSTIN REESE, STEVEN COX, MICAH  
WITTENBORN and SHELBY BALL, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

DYCOM INDUSTRIES, INC., a Florida  
corporation; PRINCE TELECOM, LLC, a  
Delaware limited liability company, f/k/a  
PRINCE TELECOM, INC.,

Defendants.

NO. C09-0606 MJP

~~[PROPOSED]~~ ORDER OF FINAL  
SETTLEMENT APPROVAL AND  
DISMISSAL WITH PREJUDICE

WHEREAS, on January 8, 2010, this Court entered its Order Preliminarily Approving Settlement, Directing Issuance of Class Notice, and Scheduling Fairness Hearing (Dkt. No. 29) (the "Preliminary Order"); and

WHEREAS, individual notice complying with Rule 23 was sent to the last-known address of each reasonably identifiable member of the Settlement Class, and where follow-up procedures outlined in the Stipulation of Settlement and approved by the Preliminary Order have been completed; and

[PROPOSED] ORDER OF FINAL SETTLEMENT  
APPROVAL AND DISMISSAL WITH PREJUDICE - 1  
CASE NO. C09-0606 MJP

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1 WHEREAS, a fairness hearing on final approval of the settlement was held before the  
2 Court on April 23, 2010; and

3 WHEREAS, no objections to the settlement were made by any member of the  
4 Settlement Class; and

5 WHEREAS, the Court, being advised, finds that good cause exists for entry of the  
6 below Order; now, therefore,

7 IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED THAT:

8 1. Unless otherwise provided herein, all capitalized terms in this Order shall have  
9 the same meaning as set forth in the Stipulation of Settlement previously filed with this Court.

10 2. The Court finds that notice to the Settlement Class has been completed in  
11 conformity with the Preliminary Order. The Court finds that this notice was the best notice  
12 practicable under the circumstances, that it provided due and adequate notice of the  
13 proceedings and of the matters set forth therein, and that it fully satisfied all applicable  
14 requirements of law and due process.

15 3. The Court finds it has personal and subject matter jurisdiction over all claims  
16 asserted in the Action with respect to all members of the Settlement Class.

17 4. The settlement of the Action on the terms set forth in the Stipulation of  
18 Settlement is approved as being fair, adequate, and reasonable in light of the degree of recovery  
19 obtained in relation to the risks faced by the Settlement Class in litigating the claims. The  
20 settling Plaintiffs are properly certified as a class as part of this settlement. The relief provided  
21 to the settling Plaintiffs under the Stipulation of Settlement is appropriate as to the individual  
22 members of the settling Plaintiffs and as a whole.

23 5. The Court approves enhancement awards of \$1,000 each to the four Class  
24 Representatives for a total of \$4,000, which shall come out of the GFV. The enhancement  
25 awards are fair and reasonable and will compensate the Class Representatives for their time and  
26 effort and the risk they undertook in prosecuting these cases. The enhancement awards shall be

1 paid to the Class Representatives in addition to any shares of the NFV to which the Class  
2 Representatives are entitled as Qualified Claimants.

3         6. The Court approves the payment of fees and costs to Class Counsel as fair and  
4 reasonable based on both the "percentage of the fund" method and "lodestar method," which  
5 courts use to determine the reasonableness of fees. The Court reaches this conclusion after  
6 analyzing the number of hours Class Counsel reasonably expended on the litigation multiplied  
7 by counsel's reasonable hourly rates. The Court has also taken into consideration such factors  
8 as the difficulty of the issues involved, the requisite legal skill necessary to prosecute the  
9 litigation, the preclusion of other employment due to acceptance of the case, the contingent  
10 nature of the fee, and the experience and ability of counsel.

11         7. The settlement is binding on all Settlement Class Members, who are generally  
12 defined as all current and former employees of Prince Telecom who have worked as non-  
13 managerial installation technicians in the State of Washington from May 1, 2005 through  
14 December 18, 2009, who did not exclude themselves from the settlement in a timely manner,  
15 and who are otherwise not disqualified pursuant to the terms of the Stipulation of Settlement.

16         8. Each member of the Settlement Class who submits a valid and timely Claim  
17 Form shall be entitled to receive a proportionate share of the NFV. Any Settlement Class  
18 Member who fails to submit a valid and timely Claim Form will not receive a share of the NFV  
19 but will be bound nevertheless by the terms of the Stipulation of Settlement.

20         9. All Settlement Class Members are bound by the terms of the Stipulation of  
21 Settlement. As of the settlement's Effective Date, all Settlement Class Members shall  
22 conclusively be deemed to have irrevocably released, relinquished, and forever discharged all  
23 claims against all released individuals as set forth in the Stipulation of Settlement. The  
24 Stipulation of Settlement provides: Upon final approval by the Court, the Settlement Class,  
25 including each Settlement Class Member who has not submitted a timely and valid written  
26 request to opt out of the Settlement, will release, to the extent permitted by law, Dycom

Industries, Inc., Prince Telecom, LLC, and each of their present and former affiliates, parent companies, subsidiaries, shareholders, officers, partners, directors, members, servants, agents, shareholders, employees, representatives, accountants, insurers, and attorneys, past, present, and future, and all persons acting under, by, through, or in concern with any of them, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued for, or which arise from or are reasonably connected with the factual allegations and claims asserted in the Action including, without limitation, any and all claims for alleged wage and hour violations or unfair or deceptive acts and practices under Washington or federal law, including claims under RCW 49.46.130, RCW 49.46.090, RCW 49.12.020, RCW 49.28.010, RCW 49.12.450, RCW 49.12.020, RCW 49.52.050, RCW 19.86.010-.920, WAC 296-128-550, WAC 296-126-021, WAC 296-126-092, WAC 296-126-025, WAC 296-126-028, 29 U.S.C.A. §§201-219, claims for restitution and other equitable relief, liquidated damages, punitive damages, penalties under Washington or federal law of any nature whatsoever, or any other benefit claimed on account of the allegations asserted in the Action arising from May 1, 2005 through December 18, 2009.

10. As of the Effective Settlement Date, all Settlement Class Members are forever barred and enjoined from commencing, prosecuting or continuing to prosecute, either directly or indirectly, in this or any other jurisdiction or forum, any of the claims that are released by the Stipulation of Settlement or barred by the entry of judgment in this action.

11. Neither this Order nor any aspect of the Stipulation of Settlement is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Defendants specifically deny any liability. Each of the Parties to the settlement entered into the Stipulation of Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

1           12.     The Clerk shall enter final judgment dismissing this action on the merits with  
2 prejudice and without costs or attorney fees to any party. The claims that are thereby dismissed  
3 shall include all claims encompassed by the release set out in the Stipulation of Settlement.

4           13.     The dismissal of this case is without prejudice to the rights of the parties to  
5 enforce the terms of the Stipulation of Settlement and the rights of Class counsel to seek the  
6 payment of fees and costs provided for in the Stipulation of Settlement. Without affecting the  
7 finality of this Order, or the judgment to be entered pursuant hereto, in any way, the Court  
8 retains jurisdiction over this matter for purposes of resolving any disputes which may arise  
9 under the Stipulation of Settlement.

10           DONE IN OPEN COURT this 23 day of April, 2010.

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13 UNITED STATES DISTRICT JUDGE

14 Presented by:

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16  
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**CERTIFICATE OF SERVICE**

I, Toby J. Marshall, hereby certify that on April 20, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 20th day of April, 2010.

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